sideration during or on the eve of insolvency, is fraudulent.[16] This doctrine, representative of the great weight of authority, has recently been approved in a federal court, *In re Terens* (E. D. Wis. 1910) 175 Fed. 495, where it was held that a transfer by one partner of his interest in a firm of two, to his co-partner who assumed the firm debts, when the partnership and the individual partners were insolvent, was fraudulent, regardless of their actual state of mind.

Obviously a promise by an insolvent, to pay a debt is valueless, and so where one partner transfers his interest in the business to a surviving insolvent partner, on the understanding that he assume the firm debts, no real consideration passes,[17] though some courts hold the moral obligation to be sufficient.[18] Nor, indeed, does the promise impress a lien on the property, but merely a personal liability on the promisor.[19] A transfer by the firm to pay a debt for which neither the firm nor a partner individually is liable is voluntary,[20] but, on the other hand, such a debt assumed during solvency, becomes the debt of the firm and may properly be discharged after insolvency.[21] On a mutual agreement by the partners to use the firm property for the payment of each other's debts, it has been held that the waiver of the right by each partner to have the assets applied to the payment of firm debts, is a sufficient consideration.[22] The better, and more authoritative view, however, is that since the interest of the partners in the firm property is merely the surplus after the debts are paid, such a transfer is a relinquishment of no rights at all,[23] and is, therefore, without consideration and void. It is conceived, moreover, that the recognition of the firm creditors' rights necessarily results in a strict definition of valuable consideration.

THE ADMISSIBILITY OF A TESTATOR'S DECLARATIONS DISCLOSING INTENTION.—Although the declarations of a testator violate the Hearsay Rule if offered as evidence of extrinsic facts, their admissibility as evidence of the testator's mental condition at the moment of utterance, is undoubted. And if the mental condition evidenced is not of a mere temporary character its existence at prior or subsequent moments is a logical inference, unless the interval of time between the moment of declaration and the time at which the mental state is material is so great that the fact of its existence at the latter moment is too conjectural. This depends largely upon the durableness of the particular mental condition. Accordingly, testator's

[16] *Ex parte* Mayou (1865) 4 De G., J. & S. 663; Darby *v.* Gilligan (1889) 33 W. Va. 246; Thayer *v.* Humphrey *supra; In re* Cook (1871) Fed. Cas. No. 3150; *In re* Sauthoff (1877) Fed. Cas. No. 12380; Roof *v.* Herron (1883) 15 Neb. 73; Bannister *v.* Miller (1895) 54 N. J. Eq. 121.

[17] Conroy & O'Connor *v.* Woods (1859) 13 Cal. 626; Darby *v.* Gilligan *supra; Ex parte* Mayou *supra.*

[18] Johnson *v.* Robuck (1898) 104 Ia. 523.

[19] *Ex parte* Ruffin *supra;* Smith *v.* Edwards (Tenn. 1842) 7 Humph. 106.

[20] Wiggins *v.* Blackshear (1894) 86 Tex. 665.

[21] Nordlinger *v.* Anderson *supra;* Teague *v.* Lindsey (1894) 106 Ala. 266, 278.

[22] Wiggins *v.* Blackshear *supra.*

[23] Jackson Bank *v.* Durfey (1895) 72 Miss. 721. This of course applies where the firm is treated as an entity, distinct from its members. Teague *v.* Lindsey *supra.*

declarations indicating insanity [1] or mental weakness,[2] whether made before or after the execution of his will,[3] are competent evidence of his testamentary capacity,[4] or of the effect of undue influence upon him,[5] at the time of the will's execution.

Declarations which discloses only the intention of the testator, on the other hand, have been disposed of with less uniformity. Where they are offered to prove facts narrated in the declaration they violate the Hearsay Rule,[6] although testator's declarations have been admitted as a special exception to that rule [7] on the grounds alleged to underlie the recognized exceptions—the probable truth of the declartion—assured in this case by the disinterestedness of the testator. However, they need not be offered for this purpose; but rather to prove intention only, in which event they are admittedly competent if intention is relevant.[8] Intention, in turn, may be of probative force in the proof of alleged facts.[9] Obviously, then, intention may be proved when relevant, by declarations introduced to evidence it, even though these declarations would be inadmissible under the Hearsay Rule if introduced to prove directly the facts sought to be established by proof of intention. The question in such cases narrows down to the relevancy of intention as evidence. On this theory, moreover, declarations of intention need not accompany acts attempted to be explained,[10] since they are not offered as part of the *res gesta,* but simply to show a state of mind. It is apparently only essential that the act which intention tends to prove shall be sufficiently close in time to the declaration to render it possible to find that the intention would reasonably endure for that length of time, and would naturally result in that act. Respectable authority, however, denies the reliability of intention as a basis for the inference of the performance of that which was intended;[11] a view of doubtful validity.

So it would seem that proof of an intention of an individual to execute a will of a certain tenor is relevant to establish that a will of corresponding character exhibited to the court is his will, and that declarations evidencing this intention are admissible. Properly deciding that the Hearsay Rule was inapplicable in such a case, the court in a recent case, *State* v. *Ready* (N. J. 1909) 75 Atl. 564, where the defendant was prosecuted for the forgery of a will, reached this result.

The adoption of this theory, however, results logically in the admis-

[1] Waterman *et al. v.* Whitney *et al.* (1854) 11 N. Y. 157.

[2] Herster *v.* Herster (1889) 122 Pa. St. 239; Robinson Exr. *v.* Hutchinson *et ux.* (1853) 26 Vt. 38.

[3] Shailer *v.* Bumstead *et al.* (1868) 99 Mass. 112; Mooney *v.* Olsen (1879) 22 Kan. 69.

[4] Waterman *et al. v.* Whitney *et al. supra.*

[5] Dennis and Wife *v.* Weekes (1874) 51 Ga. 24; Shailer *v.* Bumstead *et al. supra.*

[6] Clark *v.* Turner *et al.* (1897) 50 Neb. 290.

[7] Lane Executor *v.* Hill (1895) 68 N. H. 275; McElroy *v.* Phink (1903) 97 Tex. 147.

[8] 3 Wigmore § 1725.

[9] Doe d. Shallcross *v.* Palmer *et al.* (1851) 16 Q. B. 747; Sugden *v.* Lord St. Leonards (1876) L. R. 1 Probate Div. 154.

[10] Mutual Life Ins. Co. *v.* Hillmon (1892) 145 U. S. 285; Commonwealth *v.* Trefethen (1892) 157 Mass. 180.

[11] Throckmorton *v.* Holt (1900) 180 U. S. 552.

sibility of post-testamentary declarations disclosing intention, where it can be said that such declarations manifest an intention which has been previously formed but which has endured to the time of the declaration. These subsequent declarations, however, are objectionable upon other grounds; their unreliability because of their probable falsity, a strong probability where acts previously performed may be undone by parol declaration. This, moreover, is especially true concerning testamentary disposition of property because of the general capriciousness of testators and their proneness to alter their testatamentary purpose on slight provocation. If, however, for any reason, this objection does not obtain in a given case, post-testamentary declarations are as admissible as those preceding execution, if not too remote.[12] This, it is conceived, is the case, when such declarations exhibit an intention which accords with that shown to have previously existed, and are corroborative evidence of a testamentary plan. Such declarations furnishing corroborative evidence, moreover, are not only admissible, but are virtually imperative when it is sought to establish a normal testamentary purpose as distinguished from the proof of mental capacity.[13] Normal testamentary purpose so established is often of great importance. Thus, in the case of a lost will, proof of it may suffice to establish the contents of the will,[14] and, in a case where duress is extrinsically proved, a deviation in the will exhibited, from the established post-testamentary purpose tends to prove that the duress was effective.[15]

JURISDICTION OF BANKRUPTCY OVER INFANTS.—The National Bankruptcy Act applies to all persons who owe debts. To determine whether a particular class of persons comes under the provisions of the law, it, therefore, becomes necessary to decide whether the individuals included within that class do owe debts. Thus, previous to the enactment of the Married Women's Property Acts, it was generally held that a *femme covert* could not be declared a bankrupt, as she was incapable of contracting debts.[1] Since the old English bankruptcy laws were applicable to traders only,[2] the cases decided under these statutes also laid down the rule that infants could not become bankrupts.[3] Although these holdings have generally been interpreted as due to this peculiar provision of the statutes rather than to the general principles of law relating to the obligations of infants, yet it seems that in the last analysis the objection goes back to the fact that infants were not absolutely liable on their trade debts. Neither were they able to take advantage of the insolvency statute, inasmuch as they could not execute a valid warrant of at-

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[12]McDonald *et al. v.* McDonald *et al.* (1895) 142 Ind. 55; McBeth *v.* McBeth (1847) 11 Ala. 596; Sugden *v.* Lord St. Leonards *supra.*

[13]3 Wigmore § 1738 b.

[14]Sugden *v.* Lord St. Leonards *supra.*

[15]Shailer *v.* Bumstead *et al. supra.*

[1]Lowell, Bankruptcy § 15.

[2]*Re* Smedley (1864) 10 L. T. [N. S.] 432; *Ex parte* Stevenson (1868) 19 L. T. [N. S.] 23.

[3]Rex *v.* Cole (1700) 1 Raym. 443; *Ex parte* Sydebotham (1742) 1 Atk. 146.